

LEGISLATIVE BILL 328

Approved by the Governor April 22, 2009

Introduced by Pahls, 31.

FOR AN ACT relating to finance; to amend sections 8-113, 8-702, 45-712, 45-713, 45-718, 45-719, 45-720, 45-721, 45-1008, 45-1018, 45-1019, and 45-1025, Reissue Revised Statutes of Nebraska, and sections 45-701, 45-702, 45-703, 45-704, 45-705, 45-706, 45-707, 45-708, 45-709, 45-710, 45-711, 45-714, 45-715, 45-716, 45-717, 45-717.01, 45-717.02, 45-722, 45-723, 45-1001, 45-1002, 45-1007, 45-1013, 45-1024, 45-1033, and 76-2711, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to mortgage origination and installment loans; to implement certain federal requirements; to rename an act; to transfer provisions; to provide for civil penalties; to provide for licensee duties; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 8-113, Reissue Revised Statutes of Nebraska, is amended to read:

8-113 No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity. This section does not apply to: (1) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (2) bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (3) affiliates or subsidiaries of (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (4) organizations substantially owned by (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used, or (d) any combination of entities listed in subdivisions (a) through (c) of this subdivision; (5) mortgage bankers licensed or registered under the ~~Mortgage Bankers Registration and Residential Mortgage Licensing Act~~, if the word mortgage immediately precedes the word bank or its derivative; (6) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code; (7) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof; and (8) such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

Sec. 2. Section 8-702, Reissue Revised Statutes of Nebraska, is amended to read:

8-702 (1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits

in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

~~(2)~~ (2) (a) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given ~~(a)~~ (i) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and ~~(b)~~ (ii) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in this subsection shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in this subsection in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with this subsection with the Department of Banking and Finance.

(b) Effective July 31, 2010, any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employees' identity to the Nationwide Mortgage Licensing System and Registry:

(i) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(ii) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency, except that such charter shall not be automatically forfeited for failure to comply with subdivision (2)(b) of this section if the banking institution cures such violation within sixty days after receipt of notice of such violation from the Department of Banking and Finance. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Sec. 3. Section 45-701, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-701 Sections 45-701 to 45-723 45-706 and sections 9 to 39 of this act shall be known and may be cited as the Mortgage Bankers Registration and Residential Mortgage Licensing Act.

Sec. 4. Section 45-702, Revised Statutes Cumulative Supplement,

2008, is amended to read:

45-702 For purposes of the Mortgage Bankers Registration and Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a deed of trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by a multistate licensing and application system, the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

~~(4)~~ (5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

~~(5)~~ (6) Department means the Department of Banking and Finance;

~~(6)~~ Director means the Director of Banking and Finance;

(7) Financial Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, ~~or~~ credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent; ~~Financial institution also means an industrial loan and investment company chartered under the laws of any other state and subject to similar supervision and regulation as a bank chartered under the laws of this state;~~

(8) Director means the Director of Banking and Finance;

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

~~(8)~~ (13) Licensee means any person licensed under the act Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt

from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

~~(9)~~ (15) Mortgage banker or mortgage banking business means any person not exempt under section 45-703 (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

~~(10)~~ Mortgage banking business means any person who employs a mortgage banker or mortgage bankers or who directly or indirectly makes, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a mortgage loan for compensation or gain or in the expectation of compensation or gain;

~~(11)~~ Mortgage loan means any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit;

~~(12)~~ Multistate licensing and application system means a residential real estate mortgage licensing system data base of which the department is a member;

(16) (a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 12 of this act, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

~~(13)~~ (19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

~~(14)~~ (20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

~~(15)~~ Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land;

(21) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d)

of this subdivision;

~~(16)~~ (22) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(23) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

~~(17)~~ (24) Registrant means a person registered pursuant to section 45-704; and

(25) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(26) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

~~(18)~~ (27) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;-

(28) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

(29) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Sec. 5. Section 45-703, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-703 (1) Except as provided in section 45-704, the following shall be exempt from the ~~Mortgage Bankers Registration and Residential Mortgage Licensing Act:~~

(a) Any ~~financial~~ depository institution or wholly owned subsidiary thereof;

(b) Any registered bank holding company;

~~(c) Any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;~~

(c) Any insurance company that is subject to regulation by the Department of Insurance and is either (i) organized or chartered under the laws of Nebraska or (ii) organized or chartered under the laws of any other state if such insurance company has a place of business in Nebraska;

~~(d) Any person licensed to practice law in this state who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services in the regular course of his or her practice as an attorney at law; negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;~~

~~(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services as a real estate broker or real estate salesperson; engaging in real estate brokerage activities unless such person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;~~

~~(f) Any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the act or exempt from the act; registered mortgage loan originator when acting for an entity described in subdivision (23) (a) (i), (ii), or (iii) of section 45-702;~~

(g) Any individual acting solely as an agent of a mortgage banker licensed or registered pursuant to the act or exempt from the act if there is a written agency contract between the individual and the licensee which provides that, with respect to the mortgage banking business, the individual acts exclusively for the licensee as an agent; sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business in any capacity other than as

a purchaser or servicer of an installment contract, as defined in section 45-335, which is secured by a mobile home or trailer;

(h) Any holding company of a financial institution other than a registered bank holding company, trust company chartered pursuant to the Nebraska Trust Company Act;

(i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska;

(j) Any insurance company organized or chartered under the laws of any other state if the insurance company has a place of business in Nebraska, and individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(k) Any individual who does not regularly engage in the mortgage banking business who (i) makes a mortgage loan with his or her own funds for his or her own investment, (ii) makes a purchase-money mortgage, or (iii) finances the sale of his or her own real property without the intent to resell the mortgage loan, offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

(1) Any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Sec. 6. Section 45-704, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-704 (1) Notwithstanding any other provision of the Mortgage Bankers Registration and Residential Mortgage Licensing Act, no person exempt from licensing under subdivisions (1)(h) through (1)(k) of section 45-703 who employs or enters into an independent agent agreement with an individual who is required to obtain a mortgage loan originator license in this state pursuant to section 12 of this act shall act as a mortgage banker or engage in the mortgage banking business until such person has registered with the department.

(2) Any person required to register pursuant to subsection (1) of this section shall submit to the department a registration statement on forms provided by the department. The forms shall contain such information as the department may prescribe as necessary or appropriate, including, but not limited to, (a) all addresses at which business is to be conducted, (b) the names and titles of each director and principal officer of the business, and (c) a description of the activities of the applicant in such detail as the department may require.

(3) The registration statement required in subsection (2) of this section shall be accompanied by a registration fee of two hundred dollars.

(4) The department shall acknowledge the registration by issuing to the registrant a receipt or other form of acknowledgment.

(5) A registrant shall maintain a surety bond as required by section 9 of this act, submit reports of condition as required by section 11 of this act, and comply with the requirements of section 20 of this act pertaining to the employment of mortgage loan originators.

~~(5)~~ (6) A registration under this section shall not be assignable.

~~(6)~~ (7) After original registration, all registrations shall remain in full force and effect until the next succeeding ~~March 1~~ December 31. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of one hundred dollars.

(8)(a) If a registrant fails to maintain a surety bond as required by section 9 of this act, the department may issue a notice of cancellation of the registration.

~~(7)~~ (b) If a registrant fails to renew his, her, or its registration as required by this section and does not voluntarily surrender the registration by delivering to the director written notice of the surrender, the department may issue a notice of expiration of the registration.

Sec. 7. Section 45-705, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-705 (1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed as a mortgage banker, is or has registered with the department as provided in the Mortgage Bankers Registration and Licensing Act or section 45-704, is licensed under the Nebraska Installment Loan Act, or is otherwise exempt from the act

pursuant to section 45-703.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on forms prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation which the applicant intends to use in this state, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, and (g) if the applicant is an individual, his or her social security number.

(3) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment. A post office box number may be provided in addition to the street address.

(4) The application for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection ~~(3)~~ of section 45-715. (2) of section 33 of this act.

(5) The director may prescribe that the application for a license as a mortgage banker include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the ~~Nebraska State Patrol. Nationwide Mortgage Licensing System and Registry.~~ If the applicant is a partnership, association, corporation, or other form of business organization, the director may require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection ~~(3)~~ of section 45-715, (2) of section 33 of this act, receipt of criminal history record information by a private person or entity is prohibited.

(6) A license as a mortgage banker granted under the Mortgage Bankers Registration and Residential Mortgage Licensing Act shall not be assignable.

(7) An application is deemed filed when accepted as substantially complete by the director.

Sec. 8. Section 45-706, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-706 (1) Upon the filing of an application for a license as a mortgage banker, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the ~~Mortgage Bankers Registration and Residential Mortgage Licensing Act~~, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application; (b) delivery of the bond required under section ~~45-709~~, 9 of this act; and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage banker license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage banker license application pursuant to the act may be appealed. The ~~7~~ and the appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of subsection

(1) of this section or (b) an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to ~~(a) (i)~~ a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, ~~financial depository institution business, or installment loan company business or (b) (ii)~~ any felony under state or federal law.

(3) (a) All initial licenses shall remain in full force and effect until the next succeeding March 1. Beginning January 1, 2008, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, December 31. Mortgage banker licenses may be renewed annually by filing with submitting to the director an application a request for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including the information submitted under subsection (3) of section 45-705, and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) Except as provided in subdivision (3)(c) of this section, for For the annual renewal of a license to conduct a mortgage banking business under the Mortgage Bankers Registration and Residential Mortgage Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (3) of section 45-715. (2) of section 33 of this act.

(c) Licenses which expire on March 1, 2008, shall be renewed until December 31, 2008, upon compliance with subdivision (3)(a) of this section. For such renewals, the department shall prorate the fees provided in subdivision (3)(b) of this section using a factor of ten-twelfths.

(4) The director may require a mortgage banker licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Sec. 9. Section 45-709, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-709 (1) An Except as provided in subsection (2) of this section, an applicant for a mortgage banker license or registration shall file with the department a surety bond in the amount of one hundred thousand dollars, furnished by a surety company authorized to do business in the State of Nebraska. The surety bond also shall cover all mortgage loan originators who are employees or independent agents of the applicant. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the applicant. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries required in this section shall satisfy the requirements of this section. The bond or a substitute bond shall remain in effect during all periods of licensing.

(2) Upon filing of the mortgage report of condition required by section 11 of this act, a mortgage banker licensee or registrant shall maintain or increase its surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year in accordance with the following table. A licensee may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department.

Dollar Amount of Closed

<u>Residential Mortgage Loans</u>	<u>Surety Bond Required</u>
<u>\$0.00 to \$5,000,000.00</u>	<u>\$100,000.00</u>
<u>\$5,000,000.01 to \$10,000,000.00</u>	<u>\$125,000.00</u>
<u>\$10,000,000.01 to \$25,000,000.00</u>	<u>\$150,000.00</u>
<u>Over \$25,000,000.00</u>	<u>\$200,000.00</u>

(3) Should the department determine that a mortgage banker licensee or registrant does not maintain a surety bond in the amount required by subsection (2) of this section, the department shall give written notification

to the mortgage banker licensee or registrant requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) of this section.

~~(2) (4)~~ At any time the director may require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under ~~subsection (1)~~ subsections (1) and (2) of this section is exhausted or is inadequate for any reason, including the financial condition of the licensee or the applicant for a license. The new or supplemental bond shall not exceed one million dollars.

~~(3) Until March 1, 2007, a licensee licensed prior to July 14, 2006, may maintain the bond amount such licensee was originally licensed under, unless the licensee is maintaining a bond pursuant to subsection (2) of this section. Licensees maintaining a bond pursuant to subsection (2) of this section shall continue to maintain the amount of that bond until instructed otherwise by the director.~~

Sec. 10. Section 45-722, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-722 (1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Mortgage Bankers Registration and Residential Mortgage Licensing Act without first giving thirty days' notice to the department on forms prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

(2) The director, upon receipt of such notice, shall act upon it within thirty days and, unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4) (a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired mortgage banking business;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel ~~indicates~~ indicate that the acquired mortgage banking business would not be operated honestly, soundly, or efficiently in the public interest; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. At the conclusion of such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Sec. 11. Each licensed mortgage banker, registrant, and installment loan company shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the department may require.

Sec. 12. (1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1) of this section is July 31, 2010.

(3) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a

mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(4) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

Sec. 13. (1) An applicant for a license shall apply in a form as prescribed by the director.

(2) The application for a license as a mortgage loan originator shall be accompanied by an application fee of one hundred fifty dollars, plus the cost of the criminal history background check required by subsection (3) of this section and any processing fee allowed under subsection (2) of section 33 of this act.

(3) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(a) Fingerprints for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act, as the act existed on January 1, 2009; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(4) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivisions (3)(a) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency.

(5) For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of subdivisions (3)(b)(i) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

Sec. 14. (1) The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) The applicant has not been convicted of, or pleaded guilty or nolo contendere or its equivalent to, in a domestic, foreign, or military court:

(i) A misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the business of a mortgage banker, depository institution, or installment loan company unless such individual has received a pardon for such conviction; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction;

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

(i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;

(ii) The applicant's current outstanding tax liens or other government liens and filings;

(iii) The applicant's foreclosures within the past three years; and

(iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

(d) The applicant has completed the prelicensing education requirements described in section 15 of this act;

(e) The applicant has passed a written test that meets the test requirement described in section 16 of this act; and

(f) The applicant is covered by a surety bond as required pursuant to section 9 of this act or a supplemental surety bond as required pursuant to section 45-1007.

(2) If the director determines that a mortgage loan originator license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage loan originator license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage loan originator license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act.

(3) A mortgage loan originator license shall not be assignable.

Sec. 15. (1) In order to meet the prelicensing education requirement referred to in subdivision (1)(d) of section 14 of this act, an individual shall complete at least twenty hours of education approved in accordance with subsection (2) of this section, which shall include at least the following:

(a) Three hours of instruction in federal law and regulations regarding mortgage origination;

(b) Three hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(4) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(6) An individual who previously held a mortgage loan originator license applying to be licensed again shall prove that he or she has either (a) completed all of the continuing education requirements for the year in which the license was last held or (b) made up any deficiency in continuing education as provided by subsection (8) of section 18 of this act.

Sec. 16. (1) In order to meet the written test requirement referred to in subdivision (1)(e) of section 14 of this act, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal laws and regulations pertaining to mortgage origination;

(c) State laws and regulations pertaining to mortgage origination;

and

(d) Federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a

test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4) (a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(b) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Sec. 17. (1) All initial mortgage loan originator licenses shall remain in full force and effect until the next succeeding December 31. Mortgage loan originator licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage loan originator licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department, and the information contained in any supplemental material previously provided to the department, remains true and correct.

(2) The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under subdivisions (1)(a) through (f) of section 14 of this act;

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 18 of this act; and

(c) The mortgage loan originator has paid all required fees for renewal of the license.

(3) For the annual renewal of a mortgage loan originator license, the fee shall be one hundred twenty-five dollars, plus the cost of the criminal history background check required by the director and any processing fee allowed under subsection (2) of section 33 of this act.

(4) Except as provided in subsection (4) of section 19 of this act and subsection (4) of section 27 of this act, should the director conclude that a mortgage loan originator does not meet the minimum standards for license renewal, the director shall deny the renewal application. A decision of the director denying a renewal of a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act.

Sec. 18. (1) A mortgage loan originator shall complete annually at least eight hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three hours of instruction in federal laws and regulations regarding mortgage origination;

(b) Two hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator, an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) A licensed mortgage loan originator:

(a) Shall only receive credit for a continuing education course in the year in which the course is taken except as provided in subsection (8) of this section; and

(b) Shall not take the same approved course in the same or consecutive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(7) An individual having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1)(a), (b), and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in this state.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new license or renewal license. Such individual may make up any deficiency in continuing education as established by rule, regulation, or order of the director if such individual meets the requirements of subdivision (2)(a) of section 17 of this act and has paid the new application fee as provided by subsection (2) of section 13 of this act or the reinstatement fee as provided by subdivision (4)(b) of section 27 of this act.

Sec. 19. (1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 27 of this act or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 27 of this act or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 27 of this act or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 17 of this act;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 27 of this act or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 27 of this act, or the license is reactivated.

(4) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 17 of this act except for being covered by a surety bond pursuant to subdivision (1)(f) of section 14 of this act. Such renewal shall not reactivate the license.

(5) The department shall reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 20 of this act that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator is covered by a surety bond pursuant to subdivision (1)(f) of section 14 of this act.

Sec. 20. (1) A mortgage loan originator shall be an employee or independent agent of a single licensed mortgage banker, registrant, or installment loan company that shall directly supervise, control, and maintain responsibility for the acts and omissions of the mortgage loan originator.

(2) A mortgage loan originator shall not engage in mortgage loan origination activities at any location that is not a main office location of a licensed mortgage banker, registrant, or installment loan company or a branch office of a licensed mortgage banker or registrant. The licensed mortgage

banker, registrant, or installment loan company shall designate the location or locations at which each mortgage loan originator is originating residential mortgage loans.

(3) Any licensed mortgage banker, registrant, or installment loan company who engages an independent agent as a mortgage loan originator shall maintain a written agency contract with such mortgage loan originator. Such written agency contract shall provide that the mortgage loan originator is originating loans exclusively for the licensed mortgage banker, registrant, or installment loan company.

(4) A licensed mortgage banker, registrant, or installment loan company that has hired a licensed mortgage loan originator as an employee or entered into an independent agent agreement with such licensed mortgage loan originator shall provide notification to the department as soon as reasonably possible after entering into such relationship, along with a fee of fifty dollars. The employing entity shall not allow the mortgage loan originator to conduct such activity in this state prior to such notification to the department and confirmation that the department has received notice of the termination of the mortgage loan originator's prior employment.

(5) A licensed mortgage banker, registrant, or installment loan company shall notify the department no later than ten days after the termination, whether voluntary or involuntary, of a mortgage loan originator unless the mortgage loan originator has previously notified the department of the termination.

Sec. 21. The unique identifier of any individual originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.

Sec. 22. Section 45-711, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-711~~ A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the

licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Mortgage Bankers Registration and Residential Mortgage Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn; and

(9) Notify the director in writing within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction has invoked suspension or revocation procedures against the licensee;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(e) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

~~(9) (10) Notify the director in writing or through an electronic method as prescribed by the director within thirty days after the occurrence of any material development, including, but not limited to, of the following:~~

~~(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;~~

~~(b) Business reorganization;~~

~~(c) The institution of license suspension or revocation procedures by any other state or jurisdiction;~~

~~(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;~~

~~(e) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;~~

~~(a) Business reorganization;~~

~~(b) A change of name, trade name, doing business as designation, or main office address;~~

~~(c) The establishment of a branch office. Notice of such establishment shall be on forms prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or~~

~~(d) The closing of a branch office.~~

Sec. 23. Section 45-712, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-712~~ If a licensee in connection with a residential mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty business days of the borrower's request made by certified mail, return receipt requested, in connection with a proposed sale of the real property, the borrower may authorize the preparation of a new abstract of title to the real property and the person failing to deliver the original abstract shall pay the borrower the reasonable costs of the preparation of the new abstract of title. If a borrower brings an action against the person failing to deliver an abstract of title to recover the payment made, the borrower shall also be entitled to recover reasonable attorney's fees and court costs incurred in the action.

Sec. 24. Section 45-713, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-713~~ Not less than fifteen days prior to the effective date of the transfer of servicing rights involving any residential mortgage loan, the licensee transferring the servicing rights shall send a written notice of transfer to each borrower which shall include:

- (1) The effective date of the transfer;
- (2) The name, address, and telephone number of the transferee and the name of a referral person or department of the transferee;
- (3) Instructions concerning payments made before the effective date of the transfer; and
- (4) Instructions concerning payments made after the effective date of the transfer.

The provisions of this section shall not apply when the licensee transferring the servicing rights has provided the borrower with a written notice of transfer at the time of closing on the residential mortgage loan.

Sec. 25. Section 45-714, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-714~~ (1) A licensee, an officer, an employee, or an agent of the licensee shall not:

(a) Assess a late charge if all payments due are received before the date upon which late charges are authorized in the underlying mortgage or deed of trust deed or other loan documents;

(b) Delay closing of a residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(c) Misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a residential mortgage loan or a borrower to take a residential mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf;

(d) Misrepresent to, or conceal from, an applicant for a residential mortgage loan or a borrower material facts, terms, or conditions of a residential mortgage loan to which the licensee is a party;

(e) Fail to make disclosures as required by the Residential Mortgage Licensing Act and any other applicable state or federal law including regulations thereunder;

~~(f)~~ (f) Engage in any transaction, practice, or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of any residential mortgage loan;

~~(g)~~ (g) Receive compensation for acting as a mortgage banker or mortgage loan originator if the licensee has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the residential mortgage loan unless the licensee has provided written disclosure to the person from whom compensation is collected that the licensee is receiving compensation both for acting as a mortgage banker or mortgage loan originator and for acting as a real estate broker or agent;

~~(h)~~ (h) Advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised, in any manner, including by the Internet, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a residential mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;

~~(i)~~ (i) Record a lien on real property if money is not available for the immediate disbursement to the borrower unless, before that recording, the licensee (i) informs the borrower in writing of the reason for the delay and of a definite date by which disbursement shall be made and (ii) obtains the borrower's written permission for the delay unless the delay is required by any other state or federal law;

~~(j)~~ (j) Fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including,

but not limited to, money, funds, deposits, checks, drafts, mortgages, trust deeds, or other documents or things of value which the licensee was not entitled to retain;

~~(j)~~ (k) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;

~~(k)~~ (l) Collect fees and charges on funds other than new funds if the licensee makes a residential mortgage loan to refinance an existing residential mortgage loan to a current borrower of the licensee within twelve months after the previous residential mortgage loan made by the licensee;

~~(l)~~ (m) Assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds;

~~(m)~~ (n) Allow the borrower to finance, directly or indirectly, (i) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a residential mortgage loan or (ii) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. For purposes of this section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

~~(n)~~ (o) Falsify any documentation relating to a residential mortgage loan or a residential mortgage loan application;

~~(o)~~ (p) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or any portion of such existing loan or debt;

~~(p)~~ (q) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a residential mortgage loan; ~~or~~

~~(q)~~ (r) Obtain a signature on a document required to be notarized in connection with a residential mortgage loan or a residential mortgage loan application unless the qualified notary public performing the notarization is physically present at the time the signature is obtained; ~~or~~

(s) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a Class III misdemeanor.

(3) Any person who violates any provision of subsection (1) of this section is liable to the applicant for a residential mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the residential mortgage loan, damages resulting from such violation, interest on the damage from the date of the violation, and court costs, including reasonable attorney's fees.

Sec. 26. Section 45-710, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-710~~ (1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the Mortgage Bankers Registration and Licensing Act act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding,

including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(a) Criminal, civil, and administrative history information;

(b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act, as the act existed on January 1, 2009; and

(c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such licensee, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to the act, concerning their business.

(4) Each licensee, registrant, individual, or person subject to the act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section.

~~(2)~~ (5) The director may send a notice of investigation or inquiry request for information to a licensee. Upon receipt by a licensee of the director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee or any person.

(6) For the purpose of any investigation, examination, or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

~~(3)~~ (7) In conducting an examination or investigation under this section, the director may rely on reports made by the licensee which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

(a) The United States Department of Housing and Urban Development;

(b) The Federal Housing Administration;

(c) The Federal National Mortgage Association;

(d) The Government National Mortgage Association;

(e) The Federal Home Loan Mortgage Corporation; or

(f) The United States Department of Veterans Affairs.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to the act in

the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

~~(4)~~ (9) If the director receives a complaint or other information concerning noncompliance with the ~~Mortgage Bankers Registration and Licensing Act~~ act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

~~(5)~~ (11) The total charge for an examination or investigation shall be paid by the licensee as set forth in sections 8-605 and 8-606.

~~(6)~~ (12) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

~~(7)~~ (13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

Sec. 27. Section 45-707, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-707~~ (1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the ~~Mortgage Bankers Registration and Residential Mortgage Licensing Act~~. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the ~~Mortgage Bankers Registration and Licensing Act~~, act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the ~~Mortgage Bankers Registration and Licensing Act~~, act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-710 26 of this act or has refused or failed to comply with subsection ~~(2)~~ (5) of section 45-710 26 of this act after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-711 22 of this act or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, ~~financial~~ depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual, while previously associated in any other capacity with another licensee, was the subject of a complaint under the ~~Mortgage Bankers Registration and Licensing Act~~ act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

~~(i)~~ (j) The licensee has violated the written restrictions or conditions under which the license was issued;

~~(j)~~ (k) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, ~~financial depository institution business~~, or installment loan company business or (ii) any felony under state or federal law;

~~(k)~~ (l) The licensee has had a similar license revoked in any other jurisdiction; or

~~(l)~~ (m) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section ~~45-717.01~~ 28 of this act for acts committed before the surrender.

(4)(a) If a licensee fails to (i) renew its license as required by section 45-706 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

~~(b)~~ (c) If a licensee fails to maintain a surety bond as required by section ~~45-709~~, 9 of this act, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section ~~45-717.01~~ 28 of this act for acts committed before the revocation, suspension, cancellation, or expiration.

Sec. 28. Section 45-717.01, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-717.01~~ (1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by sections ~~45-707, 45-711, and 45-714~~ 22, 25, and 27 of this act or otherwise violated the Mortgage Bankers Registration and Residential Mortgage Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section ~~45-707-27~~ 27 of this act.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, that any person has knowingly committed any act prohibited by section ~~45-707~~ 27 of this act or otherwise violated the Mortgage Bankers Registration and Residential Mortgage Licensing Act, the director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Sec. 29. Section 45-717, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-717~~ (1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Mortgage Bankers Registration and Residential Mortgage Licensing Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(4) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order.

~~(5) Nothing in the Mortgage Bankers Registration and Licensing Act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage banking business or the right of the state to punish any person for any violation of law.~~

Sec. 30. Section 45-718, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-718~~ In addition to any other remedy a licensee may have, any licensee or any person considering himself or herself aggrieved by any action of the department under the Mortgage Bankers Registration and Residential Mortgage Licensing Act may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act.

Sec. 31. Section 45-717.02, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-717.02~~ (1) ~~For the purpose of any investigation or proceeding under the Mortgage Bankers Registration and Licensing Act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.~~

(2) (1) The director may request the Attorney General to enforce the Mortgage Bankers Registration and Residential Mortgage Licensing Act. A civil enforcement action by the Attorney General may be filed in the district court of Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(3) (2) Except when expressly authorized, there shall be no private cause of action for any violation of the Mortgage Bankers Registration and Licensing Act. act.

(3) Nothing in the act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage banking business or the right of the state to punish any person for any violation of law.

(4) Failure to comply with the Mortgage Bankers Registration and Licensing Act shall not affect the validity or enforceability of any residential mortgage loan. A person acquiring a residential mortgage loan or an interest in a residential mortgage loan is not required to ascertain the extent of compliance with the act.

Sec. 32. Section 45-708, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-708~~ (1) Any person required to be licensed or registered under the Mortgage Bankers Registration and Residential Mortgage Licensing Act who, without first obtaining a license or registration under the act or while such license is on inactive status or expired or has been suspended, revoked, or canceled, ~~or expired~~ by the director, engages in the business of or occupation of, advertises or holds himself or herself out as, claims to be, or temporarily acts as a mortgage banker or mortgage loan originator in this state is guilty of a Class II misdemeanor.

(2) Any individual who has been convicted of, pleaded guilty to, or been found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, ~~financial depository institution~~ business, or installment loan company business or (b) any felony under state or federal law, and is employed by or maintains a contractual relationship as an agent of, any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act, ~~act,~~ is guilty of a Class I misdemeanor.

Sec. 33. Section 45-723, Revised Statutes Cumulative Supplement, 2008, is amended to read:

~~45-723~~ (1) The department shall require mortgage bankers, registrants, and mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements, as necessary. The requirements may include, but not be limited to: The department may require that a mortgage banker supply all or part of the information that must be provided to obtain a license pursuant to a multistate licensing and application system data base consistent with, and in compliance with, the Mortgage Bankers Registration and Licensing Act. Nothing in this subsection shall authorize the director to require any person exempt from licensure under the act or the employees or agents of any such person to submit information to or participate in the multistate licensing and application system.

(a) Background checks of mortgage bankers, registrants, and mortgage loan originators:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with the prelicensure education and testing and continuing education requirements as provided in the Residential Mortgage Licensing Act;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

~~(2) Except for the department, no person shall be authorized to~~

obtain information from a multistate licensing and application system data base or initiate any civil action based on information obtained from such data base, if such information is not currently available to such person under section 8-112 or 45-710.

(3) The director is required to regularly report violations of the act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 34 of this act.

(4) The director shall establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

~~(3)~~ (5) The department shall ensure that a multistate licensing and application system the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and a multistate licensing and application system the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

~~(4)~~ (6) The department shall upon written request provide the most recently available audited financial report of the multistate licensing and application system, Nationwide Mortgage Licensing System and Registry.

Sec. 34. In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or by order of the director;

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(4) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (1) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage bankers and mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Sec. 35. Section 45-715, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-715 (1) The department shall be responsible for the administration and enforcement of the Mortgage Bankers Registration and Residential Mortgage Licensing Act.

(2) The department may adopt and promulgate such rules and regulations as it may deem necessary in the administration of the act and not inconsistent with the act. The department shall make a good faith effort to provide a copy of the notice of hearing as required by section 84-907 in a timely manner to all licensees. Such notice may be sent electronically to licensees.

~~(3) The department may participate in a multistate licensing and~~

application system for mortgage lenders and mortgage bankers involving one or more states, the District of Columbia, or the Commonwealth of Puerto Rico. The system shall be established to facilitate the sharing of regulatory information and the licensing and application processes, by electronic or other means. The department may allow such system to collect licensing fees on behalf of the department, allow such system to collect a processing fee for the services of the system directly from each applicant for a license, and allow such system to process and maintain records on behalf of the department, including information collected pursuant to subsection (5) of section 45-705.

Sec. 36. Section 45-716, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-716 (1) All fees, charges, and costs collected by the department pursuant to the Mortgage Bankers Registration and Residential Mortgage Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) All fines collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the permanent school fund. The department shall remit fines collected under the Residential Mortgage Licensing Act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 37. Section 45-719, Reissue Revised Statutes of Nebraska, is amended to read:

45-719 The Mortgage Bankers Registration and Residential Mortgage Licensing Act shall be construed liberally so as to effectuate its purposes.

Sec. 38. Section 45-720, Reissue Revised Statutes of Nebraska, is amended to read:

45-720 Application for a license as a mortgage banker, or for registration as a mortgage banker, or mortgage banking business for a license as a mortgage loan originator pursuant to the Mortgage Bankers Registration and Residential Mortgage Licensing Act shall constitute sufficient contact with this state for the exercise of personal jurisdiction in any action arising under the act.

Sec. 39. Section 45-721, Reissue Revised Statutes of Nebraska, is amended to read:

45-721 Any residential mortgage loan made with respect to real property located in this state shall be subject to the Mortgage Bankers Registration and Residential Mortgage Licensing Act and all other applicable laws of this state, notwithstanding the place of execution, either nominal or real, of such residential mortgage loan.

Sec. 40. Section 45-1001, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1001 Sections 45-1001 to 45-1069 and sections 50 and 51 of this act shall be known and may be cited as the Nebraska Installment Loan Act.

Sec. 41. Section 45-1002, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1002 (1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

~~(b)~~ (c) Department means the Department of Banking and Finance;

~~(e)~~ (d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

~~(e)~~ (e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

~~(e)~~ (f) Director means the Director of Banking and Finance;

~~(f)~~ (g) Financial institution has the same meaning as in section 8-101;

~~(g)~~ (h) Licensee means any person who obtains a license under the act; and

(i) (i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i) (A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(j) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

~~(h)~~ (k) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and-

(1) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017, no revenue arising under the act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Sec. 42. Section 45-1007, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1007 (1) Except as otherwise provided in this section, a license shall not be issued until the applicant gives to the department a bond in the penal sum of fifty thousand dollars to be executed by the applicant and a surety company authorized to do business in the State of Nebraska, conditioned for the faithful performance by the applicant, as a licensee, of the duties and obligations pertaining to the business of lending money and the prompt payment of any judgment recovered against the applicant, as a licensee, under the Nebraska Installment Loan Act.

(2) (a) Except as provided in subsection (3) of this section, a licensee who employs or enters into an independent agent agreement with an individual required to obtain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act shall maintain the surety bond required by subsection (1) of this section and a supplemental surety bond. The supplemental surety bond posted by such licensee shall cover all mortgage loan originators who are employees or independent agents of such licensee. The supplemental surety bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against such licensee arising from a transaction involving a residential mortgage loan, as defined in section 45-702, or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the licensee. The initial amount of the supplemental surety bond shall be one hundred thousand dollars.

(b) Upon filing of the mortgage report of condition required by section 45-1018, a licensee shall maintain or increase its supplemental surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year in accordance with the following table. A licensee may decrease its supplemental surety bond in accordance with the following table if the supplemental surety bond required is less than the amount of the supplemental surety bond on file with the department.

Dollar Amount of ClosedResidential Mortgage LoansSurety Bond Required\$0.00 to \$5,000,000.00\$100,000.00\$5,000,000.01 to \$10,000,000.00\$125,000.00\$10,000,000.01 to \$25,000,000.00\$150,000.00Over \$25,000,000.00\$200,000.00

(3) (a) A person who has been issued multiple licenses pursuant to section 45-1010 and who employs or enters into an independent agent agreement with an individual required to obtain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act shall maintain a surety bond for each license that he, she, or it holds as required in subsection (1) of this section and shall also post one supplemental surety bond which shall cover all licenses held by such person. The supplemental surety bond posted by such person shall cover all mortgage loan originators who are employees or independent agents of such person. The supplemental surety bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against such person arising from a transaction involving a residential mortgage loan or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the person. The amount of such supplemental surety bond shall be as follows:

(i) The initial supplemental surety bond shall be in the amount of one hundred thousand dollars; and

(ii) Upon filing of the mortgage report of condition required by section 45-1018, the person's supplemental surety bond shall be maintained in accordance with subdivision (2) (b) of this section. For purposes of calculating the amount of the bond that is required, the total dollar amount of the closed loans shall include all residential mortgage loans in this state closed by the person;

(b) A person who holds both one or more installment loan licenses pursuant to the Nebraska Installment Loan Act and a mortgage banker license pursuant to the Residential Mortgage Loan Act shall not be required to post and maintain a supplemental surety bond if such person meets the following conditions:

(i) The person maintains a surety bond as provided in subsection (1) of this section for each installment loan license he, she, or it holds;

(ii) The person maintains a mortgage banker surety bond as provided in section 9 of this act; and

(iii) The mortgage banker surety bond covers all transactions involving residential mortgage loans, including such transactions done pursuant to the person's installment loan license or licenses.

(4) Should the department determine that a licensee does not maintain a supplemental surety bond in the amount required by subsection (2) or (3) of this section, the department shall give written notification to the licensee requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) or (3) of this section.

~~(2)~~ (5) The bond or a substitute bond required by subsection (1) of this section shall remain in effect or the licensee shall immediately cease making loans and the license shall be canceled by the director.

Sec. 43. Section 45-1008, Reissue Revised Statutes of Nebraska, is amended to read:

45-1008 Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the act. The license shall remain in full force and effect until the following March 1 and from year to year thereafter, if and when

renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act. Beginning January 1, 2010, initial licenses shall remain in full force and effect until the next succeeding December 31.

Sec. 44. Section 45-1013, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1013 (1) ~~For~~ Except as provided in subsection (2) of this section, for the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) Licenses which expire on March 1, 2010, shall be renewed until December 31, 2010, upon compliance with subsection (1) of this section. For such renewals, the department shall prorate the fees provided in subsection (1) of this section using a factor of ten-twelfths.

~~(2)~~ (3) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The expense of any publication required by this section shall be paid by the applicant licensee.

Sec. 45. Section 45-1018, Reissue Revised Statutes of Nebraska, is amended to read:

45-1018 A (1) Prior to December 31, 2010, a licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) Effective on January 1, 2011, a licensee shall submit a mortgage report of condition, including financial statements which report the licensee's earnings, as required by section 11 of this act, on or before a date or dates established by rule, regulation, or order of the director.

Sec. 46. Section 45-1019, Reissue Revised Statutes of Nebraska, is amended to read:

45-1019 ~~The director shall, upon ten days' notice to the licensee or other person stating the contemplated action and in general the grounds for the action, and upon reasonable opportunity to be heard, order any licensee or other person to cease and desist from any practice which the director finds is in violation of the Nebraska Installment Loan Act or the rules and regulations adopted and promulgated under the act.~~

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Nebraska Installment Loan Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(4) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order. The department shall remit fines

collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 47. Section 45-1024, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1024 (1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan

is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under

this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt suspension contract is a contract of a financial institution and such contract is sold directly by such financial institution or by an unaffiliated, nonexclusive agent of such financial institution in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2006, and the financial institution is responsible for the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; and taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property, ~~as that term is defined in section 45-702,~~ shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Sec. 48. Section 45-1025, Reissue Revised Statutes of Nebraska, is amended to read:

45-1025 (1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part or all of any aggregate indebtedness of the same person. Except as provided in subsection (2) of this section, the charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 does not exempt the licensee from compliance with the Nebraska Installment Loan Act.

(2)(a) Loans made by a licensee pursuant to subdivision (4) of

section 45-101.04 are not subject to the Nebraska Installment Loan Act if such loans are not made on real property. ~~as that term is defined in section 45-702.~~

(b) Loans made by a licensee pursuant to subdivision (11) of section 45-101.04 on real property, ~~as that term is defined in section 45-702,~~ are not subject to the Nebraska Installment Loan Act. A licensee making such loans shall comply with and be subject to the Mortgage Bankers Registration and Residential Mortgage Licensing Act with respect to such loans, except that the licensee shall not be required to obtain a mortgage banker license under the Mortgage Bankers Registration and Residential Mortgage Licensing Act.

(c) Any mortgage loan originator who works as an employee or independent agent of a licensee shall be required to obtain a mortgage loan originator license and shall be subject to the Residential Mortgage Licensing Act.

(3) Except as provided in subdivision (2)(a) of section 45-1024, no licensee shall enter into any loan contract under the Nebraska Installment Loan Act under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-1024 shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-1024, the payment schedule may reduce or omit installment payments. Any loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the violation, shall not on that account be void, but the licensee has no right to collect or receive any interest or charges on such loan. If any interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Sec. 49. Section 45-1033, Revised Statutes Cumulative Supplement, 2008, is amended to read:

45-1033 (1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in

violation of this subdivision constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued; ~~or~~

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law; ~~or-~~

(j) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act.

(3) (a) If a licensee fails to renew its license as required by subsection (1) of section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 45-1069 for acts committed before the surrender.

Sec. 50. (1) The department shall require licensees to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but not be limited to:

(a) Background checks of mortgage bankers, registrants, and mortgage loan originators:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with prelicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Installment Loan Act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act pertaining to residential mortgage loans, as defined in section 45-702, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 51 of this act.

(4) The director shall establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Sec. 51. In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director;

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(4) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (1) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage bankers and mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Sec. 52. Section 76-2711, Revised Statutes Cumulative Supplement, 2008, is amended to read:

76-2711 Homeowner means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property as defined in subdivision (15) of section 45-702- 45-1002.

Sec. 53. Original sections 8-113, 8-702, 45-712, 45-713, 45-718, 45-719, 45-720, 45-721, 45-1008, 45-1018, 45-1019, and 45-1025, Reissue Revised Statutes of Nebraska, and sections 45-701, 45-702, 45-703, 45-704, 45-705, 45-706, 45-707, 45-708, 45-709, 45-710, 45-711, 45-714, 45-715, 45-716, 45-717, 45-717.01, 45-717.02, 45-722, 45-723, 45-1001, 45-1002, 45-1007, 45-1013, 45-1024, 45-1033, and 76-2711, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 54. Since an emergency exists, this act takes effect when passed and approved according to law.